

By B. Smith

S.B. No. 870

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of lay midwives; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. DEFINITIONS. In this Act:

(1) "Lay midwife" means a person who practices lay midwifery.

(2) "Lay midwifery" means assisting childbirth for compensation.

(3) "Department" means the Texas Department of Health.

(4) "Board" means the Texas Board of Health.

(5) "Certified nurse midwife" means a person who is a registered nurse in accordance with the laws of this state and who has received certification from the American College of Nurse Midwives.

(6) "Natural childbirth trainer" means a person who counsels expectant mothers in the techniques of giving birth without artificial or mechanical assistance, but this definition does not include the act of assisting at childbirth.

(7) "Normal childbirth" means the delivery, at or close to term, of a pregnant woman whose physical examination reveals no abnormality or expected complications and who does not exhibit signs or symptoms of hemorrhage, toxemia, infection, abnormal fetus position, or abnormal presentation.

SECTION 2. EXCEPTIONS. This Act does not apply to a

1 certified nurse midwife, a natural childbirth trainer, a health  
2 care professional licensed by the state operating within the scope  
3 of his or her license, or a person other than a lay midwife who  
4 assists childbirth in an emergency.

5 SECTION 3. LAY MIDWIFERY BOARD. (a) The board shall  
6 appoint a lay midwifery board composed of:

7 (1) two lay midwives with at least three years of experience  
8 in the practice of lay midwifery;

9 (2) one certified nurse midwife;

10 (3) an obstetrician who is a member of the American College  
11 of Obstetricians; and

12 (4) two persons who are not practicing or trained in a  
13 health care profession and who represent the public interest.

14 (b) The lay midwifery board shall meet at least once during  
15 the first year of its existence and at other times at the call of  
16 its chairman or the board.

17 SECTION 4. TERMS. The members of the lay midwifery board  
18 hold office for staggered terms of six years, with the terms of two  
19 members expiring on January 31 of each odd-numbered year.

20 SECTION 5. OFFICERS; MEETINGS; QUORUM. (a) The lay  
21 midwifery board shall elect a chairman from one of the public  
22 interest members and a vice-chairman from any of the other members.

23 (b) Four members constitute a quorum.

24 SECTION 6. EXPENSES. Members may not receive compensation  
25 for service on the lay midwifery board. Each member is entitled to  
26 reimbursement for actual and necessary expenses incurred in  
27 performing the duties of the lay midwifery board.

1           SECTION 7. EXECUTIVE SECRETARY; STAFF. (a) The department  
2 shall appoint an executive secretary, after consultation with the  
3 lay midwifery board, to perform administrative duties, including  
4 keeping the minutes of lay midwifery board meetings, maintaining  
5 records about approved midwifery training courses, and maintaining  
6 records of persons who have received a letter of completion as  
7 described in this Act.

8           (b) The department shall pay the salaries of the executive  
9 secretary and any additional staff it determines necessary. The  
10 department shall provide office space and supplies for the  
11 executive secretary and other staff.

12           SECTION 8. DUTIES OF THE LAY MIDWIFERY BOARD. (a) The lay  
13 midwifery board shall:

14           (1) establish qualifications for the lay midwifery training  
15 course instructors;

16           (2) issue a lay midwifery training manual; and

17           (3) issue a final examination for a lay midwifery training  
18 course.

19           (b) The instructor qualifications, training manual, and  
20 final examination adopted by the lay midwifery board are subject to  
21 the approval of the board.

22           SECTION 9. APPLICATION FOR EXAMINATION. An applicant for an  
23 examination shall submit to the department an application fee of  
24 \$15 and a completed application on a form prescribed by the lay  
25 midwifery board.

26           SECTION 10. TRAINING COURSE. (a) The lay midwifery board  
27 shall approve a training course manual for the practice of lay

1 midwifery. The department shall provide the training course manual  
2 to any person who requests it. An approved course manual shall  
3 include information about:

4 (1) normal childbirth;

5 (2) symptoms of complications that occur in childbirth;

6 (3) anatomy of the human reproduction system;

7 (4) sterile techniques and procedures;

8 (5) delivery techniques to prevent vaginal lacerations;

9 (6) emergency treatment of vaginal lacerations occurring  
10 during childbirth;

11 (7) legal requirements and procedures for reporting births  
12 and deaths;

13 (8) silver nitrate treatment of newborn infant's eyes and  
14 tests for syphilis and mental retardation as required by law; and

15 (9) other information or procedures as determined by the  
16 department.

17 (b) The department may charge a fee of \$15 for a training  
18 course it conducts. The department may charge a fee of not more  
19 than \$5 for each training course manual it distributes.

20 (c) The training course shall be taught in Spanish if that  
21 is the only language a participant of the course understands. If  
22 other course participants do not understand Spanish, the training  
23 course shall be taught in English and Spanish.

24 (d) A regional office of the department shall make the  
25 training course available on a temporary basis when the department  
26 determines that the number of course offerings in a region is  
27 insufficient to satisfy the demand for training by lay midwives in

1 a region. The training course may be offered by a local health  
2 department or an accredited post-secondary educational institution  
3 or an adult education program. The training course offered by a  
4 local health department, educational institution, or adult  
5 education program shall comply with the lay midwifery board's  
6 requirements. Entities offering the training course shall submit  
7 to the department the names of persons taking the course, the  
8 course curriculum, and evidence that the instructor's  
9 qualifications comply with the department's requirements.

10 SECTION 11. EXAMINATION. (a) The final examination shall  
11 be approved by the lay midwifery board and administered by the  
12 department at its regional or local offices.

13 (b) The examination shall be administered in English and  
14 Spanish and may be offered in written or oral form.

15 SECTION 12. LETTER. The department shall grant a letter of  
16 completion to a person who takes a lay midwifery training course  
17 and passes the final examination.

18 SECTION 13. REGISTRATION OF LAY MIDWIVES REQUIRED. In  
19 December of each year, a person who practices lay midwifery shall  
20 register on a form provided by the department with the county clerk  
21 of the county where he or she resides and with the county clerk of  
22 each county where he or she practices lay midwifery.

23 SECTION 14. REGISTRATION PROCEDURES. (a) In order to  
24 register as required by Section 13 of this Act, a person shall  
25 appear in person before the county clerk of the county in which he  
26 or she resides and before the county clerk of each county in which  
27 he or she practices lay midwifery.

1           (b) As part of the registration required by Section 13 of  
2 this Act, the person registering as a lay midwife shall complete a  
3 form prescribed by the department that contains the following  
4 information:

5           (1) name;

6           (2) residence;

7           (3) post office address;

8           (4) date of birth;

9           (5) place of birth; and

10          (6) location of practice according to counties.

11          (c) The form may require other information the department  
12 determines necessary for the study of the practice of lay midwifery  
13 in the state.

14          (d) A person registering as a lay midwife shall present to  
15 the county clerk verification of his or her identity. The method  
16 of verification shall be recorded by the county clerk on a form  
17 prescribed by the department.

18          (e) The county clerk shall provide each lay midwife who  
19 registers a notice of a lay midwife's legal responsibilities under  
20 the laws and regulations of this state on a form prescribed by the  
21 department. Failure to receive the notice does not constitute a  
22 defense to prosecution for acts committed in violation of the laws  
23 and regulations of this state.

24          (f) On completion of the required registration form and  
25 verification of the registrant's identity, the county clerk shall  
26 retain for the county clerk's records a copy of each registration  
27 form or the portion of the form as designated by the department,

1 and a copy of the identity verification form. The county clerk  
2 shall send the original registration form and original verification  
3 form to the department. The county clerk may charge a reasonable  
4 fee for these services under Subdivision 10, Article 3930, Revised  
5 Civil Statutes of Texas, 1925, as amended.

6 SECTION 15. REGISTRY. (a) The department shall maintain a  
7 registry of all persons registered to practice lay midwifery.

8 (b) The registry shall contain the information specifically  
9 enumerated in Section 14(b) of this Act and other information as  
10 the department determines necessary to identify with accuracy each  
11 lay midwife who is registered and the county or counties in which  
12 he or she resides or practices. This information shall be a public  
13 record as defined in Chapter 424, Acts of the 63rd Legislature,  
14 Regular Session, 1973, as amended (Article 6252-17a, Vernon's Texas  
15 Civil Statutes).

16 (c) The registry may contain other information the  
17 department determines necessary and appropriate to ascertain the  
18 nature and extent of the practice of lay midwifery within this  
19 state. The information may only be used by the department to  
20 achieve the intent of this Act and may not otherwise be made public  
21 so as to disclose the identity of any person to whom such  
22 information relates. Such information shall not be available to  
23 public inspection under Chapter 424, Acts of the 63rd Legislature,  
24 Regular Session, 1973, as amended (Article 6252-17a, Vernon's Texas  
25 Civil Statutes).

26 SECTION 16. DUTIES OF LAY MIDWIVES. (a) Lay midwives shall  
27 disclose in oral and written form to a prospective client the

1 limitations of the skills and practices of lay midwives.

2 (b) The department, with the advice of the lay midwifery  
3 board, shall prescribe the form of the written disclosure required  
4 by this section, which shall include the information that a lay  
5 midwife:

6 (1) may assist only in normal childbirth;

7 (2) has or does not have an arrangement with a local  
8 physician for referring patients who have complications that occur  
9 before or during childbirth;

10 (3) may not administer a prescription drug, perform a  
11 Caesarean section, or perform an episiotomy; and

12 (4) has or has not passed a lay midwife training course that  
13 complies with the board's requirements.

14 (c) The written disclosure required by this section may not  
15 exceed 500 words and shall be in English and Spanish.

16 SECTION 17. PROHIBITIONS. Lay midwives may not:

17 (1) administer a prescription drug to a client;

18 (2) use instruments such as forceps or surgical instruments  
19 for any procedure other than cutting the umbilical cord or  
20 providing emergency first aid during delivery;

21 (3) remove an adherent placenta; or

22 (4) advance or retard labor or delivery by using medicines  
23 or mechanical devices.

24 SECTION 18. PENALTIES. (a) A lay midwife commits an  
25 offense if the lay midwife knowingly and intentionally commits any  
26 of the acts described in Section 17 of this Act.

27 (b) An offense under Subsection (a) of this section is a



1 Class C misdemeanor.

2 (c) A lay midwife who knowingly and intentionally fails to  
3 comply with the disclosure requirements of Section 16 of this Act  
4 commits a Class C misdemeanor.

5 (d) A lay midwife who knowingly and intentionally fails to  
6 comply with the registration requirement in Section 13 of this Act  
7 commits a Class C misdemeanor.

8 SECTION 19. FUNDS. All fees received by the department  
9 under this Act shall be deposited in the state treasury to the  
10 credit of the General Revenue Fund and shall be reappropriated to  
11 the Texas Department of Health for the purpose of defraying the  
12 costs of this Act.

13 SECTION 20. REPEALER. Section 16, Chapter 41, Acts of the  
14 40th Legislature, 1st Called Session, 1927, as amended (Rule 49a,  
15 Article 4477, Vernon's Texas Civil Statutes), is repealed.

16 SECTION 21. INITIAL APPOINTMENTS. In making the initial  
17 appointments to the lay midwifery board, the Texas Board of Health  
18 shall designate one lay midwife and one public interest  
19 representative for terms expiring January 1, 1981, the certified  
20 nurse midwife and one public interest representative for terms  
21 expiring January 1, 1983, and one lay midwife and the obstetrician  
22 for terms expiring January 1, 1985.

23 SECTION 22. EFFECTIVE DATE. This Act takes effect September  
24 1, 1979, except that Sections 16(a), 17, and 18 take effect on  
25 September 1, 1980.

26 SECTION 23. EMERGENCY. The importance of this legislation  
27 and the crowded condition of the calendars in both houses create an

1 emergency and an imperative public necessity that the  
2 constitutional rule requiring bills to be read on three several  
3 days in each house be suspended, and this rule is hereby suspended.

# LEGISLATIVE BUDGET BOARD

Austin, Texas

## FISCAL NOTE

April 6, 1979

Honorable Chet Brooks, Chairman  
Committee on Human Resources  
Senate Chamber  
Austin, Texas

In Re: Senate Bill No. 870  
By: Brooks

Sir:

In response to your request pursuant to Senate Rule 94, Subsection (g), this office finds the fiscal implications of Senate Bill No. 870 (relating to the regulation of lay midwives) to be as follows:

The bill would make no appropriation but would constitute prior legislative authorization for an appropriative request.

The bill, should it be enacted, would create a lay midwifery board to be appointed by the Texas Board of Health. The Texas Department of Health would administer regulation of lay midwives and would charge a \$15 fee for an application for an examination and permits a \$15 fee for a training course and a fee of not more than \$5 for each training course manual. The fee received by the Department of Health would be credited to the General Revenue Fund and reappropriated to the Department to defray costs of this legislation. Total revenue from the fee cannot be determined because the Texas Department of Health has no reliable data on the number of persons who would apply for licensing as lay midwives.

The probable cost of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

<u>Fiscal Year</u>	<u>Probable Cost Out Of The General Revenue Fund</u>	<u>Change In Number Of State Employees From FY 1979</u>
1980	\$ 700,161	+ 29
1981	637,972	+ 29
1982	637,972	+ 29
1983	637,972	+ 29
1984	637,972	+ 29

Similar annual costs would continue as long as the provisions of the bill are in effect.

No fiscal implication or additional cost to units of local government attributable to the bill, should it be enacted, is anticipated.

  
Thomas M. Keel  
Director

AN ACT relating to the regulation of lay midwives; providing penalties.

3-7-79  
MAR 8 1979

Filed with the Secretary of the Senate

Read, referred to Committee on HUMAN RESOURCES

Reported favorably.

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

Ordered not printed.

Senate and Constitutional Rules to permit consideration suspended by

{ unanimous consent.

{ \_\_\_\_\_ yeas, \_\_\_\_\_ nays.

To permit consideration, reading and passage, Senate and Constitutional Rules suspended by vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays.

Read second time and { ordered engrossed.  
passed to third reading.

Caption ordered amended to conform to body of bill.

Senate and Constitutional 3-Day Rules suspended by vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays to place bill on third reading and final passage.

Read third time and passed by { a viva-voce vote.  
\_\_\_\_\_ yeas, \_\_\_\_\_ nays.

OTHER ACTION:

\_\_\_\_\_  
Secretary of the Senate

Engrossed

Sent to HOUSE

ENGROSSING CLERK

\_\_\_\_\_  
Received from the Senate

\_\_\_\_\_  
Read first time and referred to Committee on \_\_\_\_\_

\_\_\_\_\_  
Reported favorably amended, sent to Printer at \_\_\_\_\_

\_\_\_\_\_  
Printed and Distributed \_\_\_\_\_

\_\_\_\_\_  
Sent to Committee on Calendars \_\_\_\_\_

\_\_\_\_\_  
Read Second time (amended): passed to third reading (failed)

by (Non-Record Vote) Record Vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays

\_\_\_\_\_  
Present, not voting.

\_\_\_\_\_  
Constitutional Rule requiring bills to be read on three several days suspended (failed to suspend) by a four-fifths vote of \_\_\_\_\_ yeas \_\_\_\_\_ nays \_\_\_\_\_ present not voting.

\_\_\_\_\_  
Read third time (amended); finally passed (failed) by a (Non-Record Vote) Record Vote of \_\_\_\_\_ yeas \_\_\_\_\_ nays \_\_\_\_\_ present not voting.

\_\_\_\_\_  
Caption ordered amended to conform to body of bill.

\_\_\_\_\_  
Returned to Senate.

\_\_\_\_\_  
Chief Clerk of the House